

**Federal Defenders
OF NEW YORK, INC.**

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

February 24, 2022

VIA ECF

Honorable Lewis J. Liman
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

**Re: United States v. Lawrence Ray
20 Cr. 110 (LJL)**

Dear Judge Liman:

We write to respectfully request that the Court order the government to disclose to the defense no later than Tuesday, March 1 (the date of the pretrial conference) the names of the witnesses it intends to call during the first week of trial.

Earlier this week, the defense requested that the government inform the defense as soon as possible which witnesses it intends to call during the first week of trial, noting that the government's representations to the Court suggest that it already has a general sense of its order of witnesses. Gov't Emails, Ex. A. In response, the government indicated that "[a]fter further discussion and consistent with our prior trial practice, we intend to inform you of the first few witnesses the Friday before trial and after that, the next days' witnesses the night before." *Id.*

This proposal is inadequate. While it may be the government's general policy not to inform the defense of its first witnesses until a few days before trial, here, such a practice is unreasonable and threatens to prejudice the defense. In a case as complex as this, with a witness list of more than 30 individuals and more than 1000 exhibits (consisting of, *inter alia*, lengthy audio recordings, video recordings, and handwritten journal entries) that are continually being updated, the defense must know before the Friday before trial which witnesses the government intends to call first in order to prepare effective cross-examinations.

The sheer volume of the government's exhibits and its rolling updates warrants disclosure of the government's witness order. On February 15, 2022, the government provided the defense with a list of over 1200 trial exhibits. Gov't Exhibits 1, Ex. C. Over the next few days, the government continued padding its exhibits. On February 22, 2022, after the defense alerted the Court to the government's then-list of 1400 exhibits, the Court expressed concern and asked if the government could "pare down" its list. Hr'g Tr. 78:1-9 (Feb. 22, 2022). In response, the government provided an updated exhibit list with approximately 1285 exhibits. Dkt. 376 at 1;

Hon. Lewis J. Liman

Gov't Exhibits 2, Ex. D. While the government has removed some exhibits, it continues to add others, artificially "narrowing" its list, in part, by consolidating nearly 100 email exhibits into one single exhibit. Similarly, summary charts that were once individual exhibits have also been consolidated. As a result, the volume of exhibits remains the same, if not larger, than it was originally.

This Court "has considerable discretion in matters of scheduling, and in seeing that the trial is conducted in a fair, efficient, and orderly manner." *Grotto v. Herbert*, 316 F.3d 198, 206 (2d Cir. 2003) (internal citations omitted). *See also United States v. LaVallee*, 379 F. Supp. 111, 116 (S.D.N.Y. 1974) (citing *Bitter v. United States*, 389 U.S. 15, 16 (1967)). Given the time it will take the defense to review the government's evolving exhibits, and in light of the number of witnesses the government intends to call at trial, the Court should exercise its discretion to order the government to disclose to the defense the order of witnesses it intends to call during the first week of trial by Tuesday, March 1. The defense also respectfully requests that the Court order that the government disclose every Monday the order of witnesses for the following week. The government should not withhold this information until the Friday before trial merely because their general practice so dictates.

Thank you for your consideration of this request.

Respectfully submitted,

/s/

Marne L. Lenox, Esq.
Peggy Cross-Goldenberg, Esq.
Allegra Glashausser, Esq.
Neil P. Kelly, Esq.

Counsel for Lawrence Ray

cc: Counsel of record

EXHIBIT A

From: [Sassoon, Danielle \(USANYS\)](#)
To: [Marne Lenox](#); [Bracewell, Mollie \(USANYS\)](#); [Keenan, Lindsey \(USANYS\)](#)
Cc: [Allegra Glashausser](#); [Peggy Cross-Goldenberg](#); [Neil Kelly](#)
Subject: RE: Order of witnesses
Date: Wednesday, February 23, 2022 7:07:27 PM

Hi Marne,

As you heard in court and mention below, Rachel Graves will be an early witness (possibly even the first witness) because of her personal circumstances.

After further discussion and consistent with our prior trial practice, we intend to inform you of the first few witnesses the Friday before trial and after that, the next days' witnesses the night before.

Thank you for the heads up that you will be raising it with the Court.

Best,
Danielle

From: Marne Lenox <Marne_Lenox@fd.org>
Sent: Wednesday, February 23, 2022 8:49 AM
To: Sassoon, Danielle (USANYS) <DSassoon@usa.doj.gov>; Bracewell, Mollie (USANYS) <MBracewell@usa.doj.gov>; Keenan, Lindsey (USANYS) <LKeenan@usa.doj.gov>
Cc: Allegra Glashausser <Allegra_Glashausser@fd.org>; Peggy Cross-Goldenberg <Peggy_Cross-Goldenberg@fd.org>; Neil Kelly <Neil_Kelly@fd.org>
Subject: [EXTERNAL] RE: Order of witnesses

Thanks, Danielle. We understand and are sensitive to concerns about [REDACTED] testimony. But your representations in court yesterday suggested that the government at least has a sense of the general order of witnesses, for instance, who will be among the first to testify (e.g. Rachel Graves) and whose testimony will not come until toward the middle of trial (e.g. Felicia Rosario). To the extent that you know which witnesses are among those who the government intends to call toward the beginning of trial, please let us know as soon as possible. If we do not have this information before the pretrial conference on Monday, we will raise it with the Court then.

Thank you,
Marne

From: Sassoon, Danielle (USANYS) <Danielle.Sassoon@usdoj.gov>
Sent: Tuesday, February 22, 2022 5:21 PM
To: Marne Lenox <Marne_Lenox@fd.org>; Bracewell, Mollie (USANYS) <Mary.Bracewell@usdoj.gov>; Keenan, Lindsey (USANYS) <Lindsey.Keenan@usdoj.gov>
Cc: Allegra Glashausser <Allegra_Glashausser@fd.org>; Peggy Cross-Goldenberg <Peggy_Cross-Goldenberg@fd.org>; Neil Kelly <Neil_Kelly@fd.org>
Subject: RE: Order of witnesses

Marne,

Candidly, we had planned for [REDACTED] to be one of the first witnesses and that is less likely now. We are still figuring things out, but are prepared right now to commit to sharing with you our expected first few witnesses by next Friday at the latest.

Best,

Danielle

From: Marne Lenox <Marne_Lenox@fd.org>

Sent: Tuesday, February 22, 2022 3:21 PM

To: Sasso, Danielle (USANYS) <DSasso@usa.doj.gov>; Bracewell, Mollie (USANYS)

<MBracewell@usa.doj.gov>; Keenan, Lindsey (USANYS) <LKeenan@usa.doj.gov>

Cc: Allegra Glashausser <Allegra_Glashausser@fd.org>; Peggy Cross-Goldenberg <Peggy_Cross-Goldenberg@fd.org>; Neil Kelly <Neil_Kelly@fd.org>

Subject: [EXTERNAL] Order of witnesses

Hi Danielle,

Can you give us a sense of the order of witnesses? We understand that likely nothing is firm at this point, but it would be helpful to know who the government intends to call the first week (at least) of trial.

Many thanks,

Marne

Marne L. Lenox

she/her/hers

Assistant Federal Defender | Federal Defenders of New York

Southern District of New York

52 Duane Street, 10th Floor

New York, NY 10007

o: (212) 417-8721

c: (917) 890-9963

EXHIBIT B

REDACTED

EXHIBIT C

REDACTED

EXHIBIT D

REDACTED